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JAMES R. BROWNING, Cle

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959
NO. 814

S. DANIELS, L. R. ALLISON and A. J. HANEY, co-partners doing business as DANIELS CONSTRUCTION COMPANY,

Petitioners,

—vs.—

WOODMONT, INC., a corporation; CONTINENTAL MATERIALS CORPORATION, formerly CONTINENTAL URANIUM, INC., a corporation,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Petitioners, plaintiffs below, state "No constitutional provisions, treaties, statutes, ordinances or regulations are involved in this petition." (Petition, P. 3) The issue on which certiorari is sought is simply one of Utah common law, on which, petitioners concede, only the Utah Supreme Court can have the final word. (Petition, P. 3)

Further, the reason urged by petitioners for granting certiorari is not that factual situations similar to the one in this case arise frequently; on the contrary, petitioners correctly state that "such fact situations are few and far between" (Petition, P. 23).

These circumstances would be sufficient in themselves to require denial of a writ of certiorari; except as to these parties, there seem no "special or important reasons" for granting the writ. (Rule 19.)

In addition, the decisions against petitioners both in the District Court and the Court of Appeals were based on the following finding of fact by the trial court:

> "By signing said agreement the plaintiffs intended to obtain and secure said concessions with respect to future operations and to take their chances on being able to work out with the defendants additional concessions or other consideration in connection with the removal of said material in the future." (R. 40)

The Court of Appeals added (Petition, P. 41):

> "Significance was attached to the fact that the contractors entered into the amendatory contract without asserting or even reserving the right to claim additional compensation for hard rock excavated while their counsel at the same time was preparing a formal demand for extra compensation to be submitted immediately after securing additional consideration by way of extension of time and extra compensation for additional excavation."
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> "We agree with the trial court that the contractor cannot recover the benefit of his bargain after he learned of the true facts and contracted prospectively in the face of such knowledge."

United States v. Atlantic Dredging Co., 253 U.S. 1, (1920) relied upon by petitioners, involved a government contract and different facts and legal principles; this case simply was not applicable here, as the Court of Appeals noted. (Petition, P. 41)

CONCLUSIONS

1. The decisions below are based largely on a finding of fact supported by substantial evidence.

2. To the extent that issues of law are involved, they are questions of Utah law, not federal questions.

Accordingly, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Receipt of six copies of the within Brief Opposing Petition for Writ of Certiorari is hereby acknowledged this ..... day of April, 1960.

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Counsel of Record for Petitioners